

REMARKS

The Office action mailed 2 April 2009, has been received and its contents carefully noted. Claims 29-36 and 39 were pending, claims 31-34 and 36 were withdrawn from consideration, and claims 29, 30, 35 and 39 were rejected. By this Response, claim 29 has been amended. Support may be found in the Specification and claims as originally filed. No statutory new matter has been added. Therefore, entry of the amendment and reconsideration in view of the following are respectfully requested.

Request for Interview

Prior to action on this Response, Applicants respectfully request a personal interview. Thus, the Examiner is respectfully requested to contact the undersigned to arrange a date and time for the interview.

Rejection under 35 U.S.C. 112, second paragraph

The Examiner rejected claims 29-30, 35 and 39 under 35 U.S.C. 112, second paragraph, as being indefinite. Specifically, the Examiner indicated that the “means for” language was unclear and that Applicants must clarify whether the limitation is meant to invoke 112, sixth paragraph.

Applicants have amended claim 29 to clarify that the device contains software means which calculates the concentration or activity of the protein based on a set of equations which take into account the measured reaction rates and the sensitivity coefficients for each substrate and for each protein. Thus, the devices as claimed in claims 29 and 35 require software means for determining the activity or the concentration of the protein using a sensitivity coefficient for each substrate and for each protein. The instant specification discloses software as corresponding structure and related mathematical algorithms. See e.g. page 28 line 16 to page 29 line 13 and the Examples.

Rejection under 35 U.S.C. 102(b)

The Examiner rejected claims 29 and 35 under 35 U.S.C. 102(b) as being anticipated by Doretto et al. Specifically, it appears that the Examiner deems that determining the activity or the

concentration of the protein using a sensitivity coefficient for each substrate and for each protein is merely an intended use rather than a means-plus-function limitation.

Applicants respectfully submit that Dorette et al. does not teach each and every limitation of the claimed invention. Specifically, Dorette et al. does not teach or suggest any structure or software means which determines the activity or concentration of a protein using a sensitivity coefficient as required and defined in the instant claims. The Examiner points to a spectrophotometer output or strip chart or data collection means as reading on “means for determining activity”. The “means for determining activity” according to Dorette et al., however, is completely different from the claimed software means which employs a set of equations which factor in a sensitivity coefficient for each substrate and for each protein and the measured reaction rates according to the present invention.

Since Dorette et al. does not teach or suggest the claimed software means, the present invention is novel.

Applicants note that claims to a method of calculating the activity or concentration of a protein using the reaction rates and sensitivity coefficients (as set forth in claim 29, but without the device structure) was found allowable over the art and issued in U.S. Patent No. 6,746,850. Thus, Applicants respectfully submit that prior to the instant invention, the prior art did not provide any software means which employs a set of equations which factor in a sensitivity coefficient for each substrate and for each protein and the measured reaction rates according to the present invention.

Therefore, the rejection under 35 U.S.C. 102(b) should properly be withdrawn.

Rejection under 35 U.S.C. 103(a)

The Examiner rejected claims 29, 30, 35, and 39 under 35 U.S.C. 103(a) as being unpatentable over Dorette et al. in view of Magnotti et al. and further in view of Ellman et al.

Applicants respectfully submit that the cited art, alone or in combination, do not teach or suggest the claimed invention. Specifically, Magnotti et al. and Ellman et al. do not alleviate the deficiencies of Dorette et al. Nowhere do the cited references, alone or in combination teach or

suggest the claimed software means. Thus, the cited references do not teach or suggest the device as claimed.

Therefore, a prima facie case of obviousness has not been established and the rejection under 35 U.S.C. 103(a) must properly be withdrawn.

Request for Rejoinder

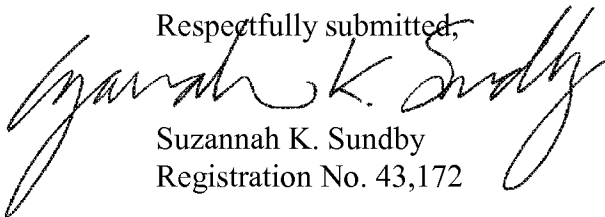
Applicants respectfully request rejoinder of the withdrawn claims which ultimately depend on claim 29.

CONCLUSION

All of the stated grounds of objection and rejection have been properly traversed, accommodated, or rendered moot. Therefore, it is respectfully requested that the Examiner reconsider all presently outstanding objections and rejections and that they be withdrawn. It is believed that a full and complete response has been made to the outstanding Office Action and, as such, the present application is in condition for allowance. If the Examiner believes, for any reason, that personal communication will expedite prosecution of this application, the Examiner is invited to telephone the undersigned at the number provided.

It is not believed that extensions of time are required, beyond those that may otherwise be provided for in accompanying documents. However, in the event that additional extensions of time are necessary to prevent abandonment of this application, then such extensions of time are hereby petitioned under 37 C.F.R. 1.136(a), and any fees required therefor are hereby authorized to be charged to **Deposit Account No. 210-380**, Attorney Docket No. **034047.003DIV1 (WRAIR 00-23)**.

Respectfully submitted,



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